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10/649,124	08/26/2003	Nobuyuki Saika	16869S-091000US	4758
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TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER	
			LE, MICHAEL	
			ART UNIT	PAPER NUMBER
			2163	

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,124	SAIKA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Le	2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 11-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Summary and Status of Claims*

1. This Office Action is in response to Applicant's reply filed December 12, 2005.
2. Claims 1-10 are cancelled.
3. Claims 11-18 are pending.
4. Claims 11-18 are rejected under 35 U.S.C. 112, second paragraph.
5. Claims 16-18 are rejected under 35 U.S.C. 101.
6. Claims 11-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al. (US Patent 5,796,633) of record, in view of Hasbun et al. (US Patent 6,311,290) of record, further in view of Chong et al. (US Provisional Application 60/392,022).
7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al. (US Patent 5,796,633) of record, in view of Hasbun et al. (US Patent 6,311,290) of record, further in view of Chong et al. (US Provisional Application 60/392,022), as applied to claim 11, further in view of Voigt et al. (US Patent 5,463,776) of record, further in view of Hoyer et al. (US Patent 6,243,105).
8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claim Rejections - 35 USC § 112*

9. **Claims 11-18 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. **Claims 11, 16 and 18** recite “levels defining groups of items” in claim 11, line 6; claim 16, line 5; and claim 18, line 6. The limitation is not found in the Specification, however –acquisition level-- is found throughout the Specification and seems to have the intended meaning. For the prior art rejections, the Examiner will interpret the “levels defining groups of items” as --acquisition levels--.

11. **Claims 13, 15 and 17** recite “the item group level” in claim 13, line 3; claim 15, line 2 and claim 17, line 5. The limitation is not found in the Specification, however –acquisition level-- is found throughout the Specification and seems to have the intended meaning. For the prior art rejections, the Examiner will interpret the “the item group level” as --the acquisition level--.

12. **Claims 11-15** claim a method, however the steps of the method are not recited using active method steps. Method claims must recite active, positive steps delimiting how the use of the method is actually practiced. See MPEP 2173.05(q).

13. **Claim 14** recites a limitation in lines 5-7 that may contradict the limitation of claim 11, lines 16-17 if the step is performed. The limitation in claim 14 recites in line 6 that “no initial operation policy is determine”, however the limitation in claim 11 lines 16-17 stores performance data according to the determine initial operation policy. If no initial operation policy is determined, as is the case of the limitation of claim 14, then the limitation of claim 11, lines 16-17 cannot be performed.

14. **Claim 12** is rejected because it depends on a rejected claim. Dependent claims contain the limitations of the parent claims and are therefore rejected for the same reasons.

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15. The prior art rejections to claims 11-18 below are made as best understood in light of the rejection under 35 U.S.C. 112, second paragraph addressed above.

***Claim Rejections - 35 USC § 101***

16. **Claims 16-18 are rejected under 35 U.S.C. 101** because the claimed invention is directed to non-statutory subject matter.

17. The basis of this rejection is set forth in a test of whether the invention is categorized as a process, machine, manufacture or composition of matter and if the invention produces a useful, concrete and tangible result. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) are found to be non-statutory subject matter. For a method claim to pass muster, the recited process must produce a useful, concrete and tangible result.

18. In the present case, **claims 16 and 17** recite a system that does not contain components defining the physical structure of the system. Instead, the components of the system of claims 16 and 17 are software per se. For a system claim to be statutory, it must recite physical components that define the physical structure of the system, thereby allowing the system to be categorized in one of the statutory categories of invention.

19. **Claim 18** recites a program, however it is not tangibly embodied enabling it to be read and executed by a machine or computer, thereby allowing the functional interrelationships to be realized. Since it is not embodied on a type of machine or computer readable storage medium, it is functional descriptive material and therefore nonstatutory.

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20. To expedite a complete examination of the instant application, the claims rejected under 35 U.S.C. 101 (nonstatutory) above are further rejected as set forth below in anticipation of applicant amending these claims to place them within the four statutory categories of invention

*Claim Rejections - 35 USC § 103*

21. **Claims 11-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al. (US Patent 5,796,633) of record, hereinafter “Burgess”, in view of Hasbun et al. (US Patent 6,311,290) of record, hereinafter “Hasbun”, further in view of Chong et al. (US Provisional Application 60/392,022) hereinafter “Chong”.**

22. In regards to **claim 11**, Burgess discloses a performance data management method for managing performance data of a computer system which includes an information processing device (Burgess: Fig. 2, element 26) and at least one storage system (Burgess: fig. 2, element 36) which includes a controller and a storage area (Burgess: col. 4, lines 2-7)<sup>1</sup>, comprising:

- a. a step in which the controller detects free space of the storage area in the storage system (Burgess: col. 7, lines 11-19);
- b. a step in which the controller acquires the performance data (Burgess: col. 5, lines 18-20; col. 8, lines 19-27)<sup>2</sup>; and
- c. a step in which the controller stores the acquired performance data in the storage area (Burgess: col. 8, lines 30-32).

23. Burgess does not expressly disclose reading performance data acquisition information from the information processing device, acquiring performance data relating to acquisition

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levels, determining an initial operation policy for defining a performance data storing scheme depending at least on the detected free space and the performance data acquisition information and storing the acquired performance data in the storage area according to the determined initial policy.

24. Hasbun discloses determining a method for storing data depending on the detected free space and storing the data according to the determined method (Hasbun: col. 26, lines 12-24). Hasbun also discloses determining the capacity of the data to be stored and a storing step that includes, when the detected free space is greater than the capacity of the data to be stored, the data is stored and when the detected free space is less than the capacity of the data to be stored, as much of the data is stored to the space as possible until more space can be reclaimed, at which time more of the data is stored as space becomes available (Hasbun: col. 26, lines 25-34; col. 27, lines 3-20).

25. Chong discloses obtaining and storing performance data acquisition information relating to items for which performance data is acquired and relating to acquisition levels, wherein each level provides different level of details for monitoring (Chong: para. 0013, 0014).

26. Burgess, Hasbun and Chong are analogous art because they are all directed towards the same field of endeavor of performance data management.

27. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method of Burgess by adding the steps of reading performance data acquisition information from the information processing device and acquiring performance data relating to acquisition levels taught by Chong, and determining an initial operation policy for defining a

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<sup>1</sup> Monitoring and tracking agent is interpreted as a controller for controlling the storage area because it stores the

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performance data storing scheme depending at least on the detected free space and the performance data acquisition information, which is used to store the acquired performance data in the storage area, as taught by Hasbun.

28. The motivation for doing so would have been because adding acquisition levels provides a faster method for users to select what items from which to acquire performance data, since a user does not have to select each individual item, but instead only a level. Furthermore, data storage space has a finite capacity, therefore continuous storage into a finite space needs to be managed as dependent on the amount of free space available in the storage device in order to efficiently utilize the space available.

29. In regards to **claim 12**, Burgess discloses a step in which the controller detects the free space of the storage area in the storage system (Burgess: col. 7, lines 11-19).

30. Burgess and Chong do not expressly disclose detecting the free space each time the acquired performance data is written to the storage area, the controller determining a dynamic operation policy based on at least the detected free space after writing the acquired performance data and the controller acquiring and storing the performance data in accordance with the newly determined dynamic operation policy.

31. Hasbun discloses determining a method for storing data depending on the detected free space and storing the data according to the determined method (Hasbun: col. 26, lines 12-24). Hasbun also discloses determining the capacity of the data to be stored and a storing step that includes, when the detected free space is greater than the capacity of the data to be stored, the

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data and performs other tasks in accordance with the storage, such as notification of other modules.

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data is stored and when the detected free space is less than the capacity of the data to be stored, as much of the data is stored to the space as possible until more space can be reclaimed, at which time more of the data is stored as space becomes available (Hasbun: col. 26, lines 25-34; col. 27, lines 3-20). Hasbun further disclose that for every object that is being allocated (data to be stored), sufficient availability exists in the storage to accommodate the object (Hasbun: col. 11, lines 50-52).

32. At the time of the invention, it would have been obvious to one of ordinary skill in the art to further modify the combined method of Burgess, Hasbun and Chong by adding the steps of detecting the free space each time the acquired performance data is written to the storage area, the controller determining a dynamic operation policy based on at least the detected free space after writing the acquired performance data and the controller acquiring and storing the performance data in accordance with the newly determined dynamic operation policy, as taught by Hasbun.

33. The motivation for doing so would have been because as data is stored, the amount of available memory decreases, which effects the storage strategy. Detecting the amount of free-space available after storing data and determining a new storage strategy prevents situations where storage is unexpectedly full.

34. In regards to **claim 13**, Burgess discloses an interval of acquiring the performance data () .

35. Burgess does not expressly disclose the acquisition level and performance data writing scheme.

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<sup>2</sup> The monitoring and tracking agent (controller) has a logging thread that obtains performance data.

36. Chong discloses obtaining and storing performance data acquisition information relating to items for which performance data is acquired and relating to acquisition levels, wherein each level provides different level of details for monitoring (Chong: para. 0013, 0014). Chong also discloses allowing a user to set a scheduling for monitoring to occur (interval for acquiring performance data) (Chong: para. 0017, lines 1-7).

37. Hasbun discloses determining a method for storing data depending on the detected free space and storing the data according to the determined method (Hasbun: col. 26, lines 12-24). Hasbun also discloses determining the capacity of the data to be stored and a storing step that includes, when the detected free space is greater than the capacity of the data to be stored, the data is stored and when the detected free space is less than the capacity of the data to be stored, as much of the data is stored to the space as possible until more space can be reclaimed, at which time more of the data is stored as space becomes available (Hasbun: col. 26, lines 25-34; col. 27, lines 3-20).

38. At the time of the invention, it would have been obvious to one of ordinary skill in the art to further modify the combined method of Burgess, Hasbun and Chong by making the dynamic operation policy determine the interval for acquiring performance data, disclosed by Burgess, the acquisition level, as taught by Chong, and the performance data writing scheme, as taught by Hasbun.

39. The motivation for doing so would have been because determining an interval for acquiring performance data makes it easier for a user because a user does not have to manually acquire the data each time (Chong: para. 0017, lines 1-7). The use of acquisition levels further adds convenience for the user because the user can monitor preset groups of items without

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having to select them individually (Chong: para. 0013, 0014). Determining a writing scheme is advantageous because as data is stored, the amount of available memory decreases, which effects the storage strategy. Detecting the amount of free space available after storing data and determining a new storage strategy prevents situations where storage is unexpectedly full.

40. In regards to **claim 15**, Burgess does not expressly disclose wherein the performance data acquisition interval becomes larger and the acquisition level becomes smaller to acquire fewer performance data as the detected free space after writing the performance data becomes smaller.

41. Chong discloses obtaining and storing performance data acquisition information relating to items for which performance data is acquired and relating to acquisition levels, wherein each level provides different level of details for monitoring (Chong: para. 0013, 0014). Chong also discloses allowing a user to set a scheduling for monitoring to occur (interval for acquiring performance data) (Chong: para. 0017, lines 1-7). Chong further discloses that the scheduling may define times when the monitoring level can change (Chong: para. 0017, lines 5-6). Chong additionally discloses that level 1 (lowest acquisition level) monitors the least amount of items and that level 3 (highest level) monitors the most (Chong: para. 0014-0016).

42. Hasbun discloses determining a method for storing data depending on the detected free space and storing the data according to the determined method (Hasbun: col. 26, lines 12-24). Hasbun also discloses determining the capacity of the data to be stored and a storing step that includes, when the detected free space is greater than the capacity of the data to be stored, the data is stored and when the detected free space is less than the capacity of the data to be stored, as much of the data is stored to the space as possible until more space can be reclaimed, at which

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time more of the data is stored as space becomes available (Hasbun: col. 26, lines 25-34; col. 27, lines 3-20).

43. At the time of the invention, it would have been obvious to one of ordinary skill in the art to further modify the combined method of Burgess, Hasbun and Chong by adding the feature of wherein the performance data acquisition interval becomes larger and the acquisition level becomes smaller to acquire fewer performance data as the detected free space after writing the performance data becomes smaller, as taught by Hasbun and Chong.

44. The motivation for doing so would have been because as data is stored, the amount of available memory decreases, which effects the storage strategy. Since the amount of free memory gets smaller, levels preconfigured to have smaller levels acquire fewer performance data would need to be used to avoid errors in storing the data. Increasing the interval between performance data acquisition aids in preventing errors because more data is not acquired as frequently.

45. **Claim 16** is substantially similar to claim 11 in the form of a system and is rejected for the same reasons.

46. **Claim 17** contains features addressed in the rejection to claims 12 and 13 and is rejected for the same reasons.

47. **Claim 18** is essentially a combination of claims 16 and 17 in the form of a program and is rejected for the same reasons.

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48. **Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al. (US Patent 5,796,633) of record, hereinafter “Burgess”, in view of Hasbun et al. (US Patent 6,311,290) of record, hereinafter “Hasbun”, further in view of Chong et al. (US Provisional Application 60/392,022) hereinafter “Chong” as applied to claim 11 above, further in view of Voigt et al. (US Patent 5,463,776) of record, hereinafter “Voigt”, further in view of Hoyer et al. (US Patent 6,243,105) hereinafter “Hoyer”.**

49. In regards to **claim 14**, Hasbun discloses a step in which the controller calculates a performance data capacity necessary for storing the acquired performance data in the storage area and a step conducted if the detected free space is larger than the calculated performance data capacity, in which no initial operation policy is determined and the controller stores the acquired performance data in the storage area (Hasbun: col. 26, lines 25-34; col. 27, lines 3-20).

50. Burgess, Hasbun and Chong do not expressly disclose:

- a. a step conducted if the detected free space is equal to or smaller than the calculated performance data capacity and the performance data acquisition information defines an overwrite mode, in which the initial operation policy is set such that the controller overwrites the acquired performance data on the performance data already stored in the storage area; and
- b. a step conducted if the detected free space is equal to or smaller than the calculated performance data capacity and the performance data acquisition information defines a delete mode, in which the initial operation policy is set such that the controller deletes all existing performance data in the storage area and then stores the acquired performance data in the storage area.

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51. Voigt discloses a space manager for managing the storage area by determining if the amount of free space available below a predetermined lower threshold level, in which case the space manager will attempt to create free space until the amount of free space is equal to an upper threshold amount of free space (Voigt: col. 4, lines 40-55). Voigt further discloses that free space can be created by deleting old files (Voigt: col. 4, lines 34-37).

52. Hoyer discloses a performance monitoring system that has an overwrite mode wherein when the overwrite mode is set, data is written over the existing file (Hoyer: col. 9, lines 23-39; col. 16, lines 6-8).

53. Burgess, Hasbun, Chong, Voigt and Hoyer are analogous art because they are directed to the same field of endeavor of performance data management.

54. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the combined method of Burgess Hasbun and Chong by adding the step of detecting if the free space is equal to or smaller than the calculated performance data capacity and the performance data acquisition information defines an overwrite mode, setting the initial operation policy such that the controller overwrites the acquired performance data on the performance data already stored in the storage area, as taught by Hoyer, and the step of detecting if the free space is equal to or smaller than the calculated performance data capacity and the performance data acquisition information defines a delete mode, setting the initial operation policy such that the controller deletes all existing performance data in the storage area and then stores the acquired performance data in the storage area, as taught by Voigt.

55. The motivation for doing so would have been because data storage space has a finite capacity, therefore continuous storage into a finite space needs to be managed as dependent on

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the amount of free space available in the storage device in order to efficiently utilize the space available (Voigt: col. 1, lines 26-51).

***Response to Amendment***

**Specification**

56. Applicant's amendment to the specification to address typographical errors is acknowledged. Consequently, objection to the specification is withdrawn.

**Rejection of Claim 5 under 35 U.S.C 112, First Paragraph**

57. Due to the cancellation of claim 5, the rejection to claim 5 under 35 U.S.C. 112, first paragraph is moot. New grounds of rejection are set forth above for the newly added claims.

**Rejection of Claim 4 under 35 U.S.C 112, Second Paragraph**

58. Due to the cancellation of claim 4, the rejection to claim 4 under 35 U.S.C. 112, second paragraph is moot. New grounds of rejection are set forth above for the newly added claims.

**Rejection of Claims 3-10 under 35 U.S.C 101**

59. Due to the cancellation of claims 3-10, the rejection to claims 3-10 under 35 U.S.C. 101 is moot. New grounds of rejection are set forth above for the newly added claims.

***Response to Arguments***

**Rejection of claims 3-10 under 35 U.S.C. 103(a)**

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60. Due to the cancellation of claims 3-10, the rejection to claims 3-10 under 35 U.S.C. 103(a) is moot. New grounds of rejection are set forth above for the newly added claims.

***Conclusion***

61. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

62. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

63. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Le whose telephone number is 571-272-7970. The examiner can normally be reached on Mon-Thurs : 9:30am-6pm, Fri: 8am-4:30pm.

64. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 571-272-4023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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65. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Le  
Art Unit 2163  
March 2, 2006



UYEN LE  
PRIMARY EXAMINER